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02-278

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From: Thom Lopes
 Sent: Tuesday, March 16, 2004 5:57 PM
 To: Michael Powell
 Subject: Fax advertising

MAY 13 2004

Federal Communications Commission
 Office of the Secretary

Dear Commissioner Powell:

In light of the fact that both telemarketing and fax advertising are governed by TCPA '91, and taking into account the wide disparity in terms of current enforcement, I'm writing to suggest a possible fix to put both modes of business contact on a more level playing field.

The success of the Do Not Call Registry has apparently been very good to this point. Obviously, some citations are still being issued, but these are arguably divided into two easily explained groups: (1) where the entity calling in violation has not downloaded a current version of the data base, and (2) egregious violations by those who ignore the law completely. This second group seems, according to my perusal of the FCC website, to have diminished considerably; thus it can be said that the new method is working very well.

Fax advertising, however, is another story. When the FCC administrative court decision of August 21, 2003 placed an eighteen-month moratorium on the enforcement of the EBR portion of the law, it probably caused more confusion than it cured, and yet still did not address the real heart of the problem. That problem is the application of the law to two very similar groups governed by the same statute in two very dissimilar ways.

Obviously, telemarketers are in the superior and more enviable position, as they are merely required to download a fresh version of the data base periodically, and their computer-driven phone banks will no longer be able to call the de-registered numbers. This quick-fix method unties the knots for both telemarketers and consumers who do not wish to be called.

Fax advertisers, however, are required to physically send a piece of paper, get one back signed, and then keep it on record forever to prove permission has been given. Even if the EBR rule is ultimately left alone, the physicality of the permission document requirement, versus the down-loadable database, is shockingly burdensome, and would appear to be a lack of due process for fax advertisers, when juxtaposed with the telemarketers' lesser burden.

This brings me to my suggestion: why not build and maintain a Do Not Fax data base to mirror the Do Not Call site? It would be a simple, quick, and easily installed fix for the problem at hand. That way, retired folks who use fax machines for personal business would no longer be bothered, and yet business owners, who comprise the vast majority of the fax machine holders, would be able to peruse the various ads that come to them from time to time. Many of these ads are for essential services or goods used daily in business, and are welcome by the businesses they reach. Conversely, if a business chooses to not receive unsolicited fax ads, it can de-register its fax number, and be out of the woods once and for all. It would still, however, be able to take fax ads from those to whom it gave permission individually.

This seems to be the best of both worlds for advertisers who rely on fax ads to tell their stories, and would solve the problem of potential court challenges pertaining to the unequal application of TCPA '91 between telemarketers and fax advertisers.

Recognizing the exceedingly difficult burden your position places on your time, I would welcome an answer from any of the commissioners or your staff. I hope that you will consider my proposal, and perhaps take it up with your technical planners. It would appear to be a simple and straightforward fix for the problem, yet allow American business to continue to use fax technology in a more unfettered way.

Thanks for your time.

Best wishes,
 Thom Lopes
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